



STATE OF WEST VIRGINIA
OFFICE OF THE ATTORNEY GENERAL
DARRELL V. MCGRAW, JR.
CONSUMER PROTECTION DIVISION
1-800-368-8808 or 304-558-8986

Press Release

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FOR IMMEDIATE RELEASE CONTACT: Charli Fulton
1-800-368-8808
304-558-8986

ATTORNEY GENERAL DARRELL MCGRAW SUES POOL COMPANY LOCATED IN FAIRMONT, WEST VIRGINIA

Attorney General Darrell McGraw today filed suit in Fairmont, West Virginia against Donna, Carmine, and Anthony Diulas, who do business together as CMS, CMS Pools, and CMS Construction. CMS advertises, sells, and installs above-ground swimming pools throughout West Virginia using a bait and switch sales scheme. It advertises an above-ground pool, including deck, ladder and fencing, for about \$699 in the local newspaper of an area. The ad lists a toll-free number for the consumers to call. When a consumer calls to ask about the pool in the ad, CMS schedules a meeting at the consumer's home. At the meeting, the salesperson disparages the advertised pool as being of poor quality or unlikely to last long and recommends that the consumer buy a more expensive model. As a result, most consumers bought pools that cost between \$3,000 and \$5,500. Although the sales were home solicitation sales, CMS did not give consumers the legally required notice of right to cancel that applies to home solicitation sales.

Consumers received warranties on their pools, liners, and filters ranging in duration ten years to life. Approximately 20 consumers complained to the Attorney General's Consumer Protection Division that they experienced various problems with their pools - rust in the pool structures, leaks in the liners, and liners that pulled loose from the pool walls. They contacted CMS many times to have the problems repaired under warranty, but CMS failed to do so. Instead, CMS directed them to seek repairs from the pool manufacturer, sent them repair kits to repair the leaks themselves, charged them to replace the liners, or did nothing at all. One consumer complained that she tried to cancel the sale under the three-day right to cancel, but CMS refused to return her \$800 down payment.

The suit charges that CMS's conduct unlawfully excludes or limits warranties; uses false advertising; advertises goods or services with the intent not to sell them as advertised; uses misrepresentations or omissions of material fact in connection with the sale of goods or services; fails to provide consumers notice of their three-day right to cancel home solicitation sales; and fails to return payment to consumers who rightfully canceled home solicitation sales.

The state seeks an order enjoining CMS from all further business activity in West Virginia until such time as it has obtained a valid business registration certificate and has resolved all matters at issue in this case. Attorney General McGraw stated, "Consumers who purchase goods or services as a result of a home solicitation have a right to cancel such purchases in writing within three days of the purchase. If the business does not give proper notice of the three-day right to cancel, consumers may cancel a home solicitation sale by notifying the seller in any manner. The right continues until the notice is given."

Persons who would like to file a complaint are encouraged to call Attorney General McGraw's Consumer Protection Division at 1-800-368-8808 or 304-558-8986. Consumers may also write to P.O. Box 1789, Charleston, WV 25326-1789.

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